

# COMPETITION ECONOMICS HANDBOOK 2020

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# Competition Economics Handbook 2020

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A Global Competition Review Special Report

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## **Competition Economics Handbook 2020**

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*Global Competition Review* is delighted to publish this thirteenth annual edition of the *Competition Economics Handbook*.

With economics at the centre of competition law, this handbook identifies the issues that antitrust economists are tackling today. The book's comprehensive format provides contact details for competition agencies' economists in over 70 jurisdictions. A Q&A format illustrates how the advisers are organised and their input into the regulation and enforcement process.

Much of the information has been provided by the agencies themselves and we are, as ever, grateful for all their cooperation.

The *Competition Economics Handbook 2020* is one of five special reports included in a *Global Competition Review* subscription each year, alongside four issues of the magazine, a survey on a four-year rotation (*Corporate Counsel* published in January 2019 and *40 Under 40*, to be published in January 2020) and two signature surveys, *Rating Enforcement* and *The GCR 100*.

We would like to thank all those who have worked on the research and production of this publication.

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### **Global Competition Review**

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## Questions and answers

### How long is the head of agency's term of office?

The chairman of the State Commission for the Protection of Economic Competition (SCPEC RA) is appointed by the National Assembly of the Republic of Armenia upon the proposal of Prime Minister of the Republic of Armenia for a five-year period. He or she may be reappointed to the same position after the term of his or her power has come to an end. However, the same person shall not be appointed as a member of the SCPEC RA more than two consecutive times, for the full term of office of five years.

### When is he or she next due for reappointment?

Gegham Gevorgyan was appointed as chairman on 23 April 2019 by the National Assembly upon the proposal of Prime Minister of the Republic of Armenia for a five-year period.

### Which posts within the organisation are political appointments?

The SCPEC RA is an autonomous body. There are no political appointments within the SCPEC RA.



**What is the agency's annual budget?**

The annual budget for 2019 is 393.5 million Armenian dram.

**How many staff are employed by the agency?**

There are currently 76 employees, including seven members of the SCPEC RA and 47 civil servants.

**To whom does the head of agency report?**

The SCPEC RA is an autonomous body and is independent from other state bodies in performing the tasks and functions provided under the Law On Protection of Economic Competition (the Law). Each year, the SCPEC RA publishes its annual programme of activities for the coming year in the National Assembly by 1 October. It also publishes a report on the previous year's activity by 1 May.

**Do any industry-specific regulators have competition powers?**

The SCPEC RA is the only authority in charge of enforcing the Law.

**If so, how do these relate to your role?**

The State Commission for the Protection of Economic Competition of the Republic of Armenia performs the functions of economic competition with regard to persons regulated or supervised by the Central Bank of the Republic of Armenia, as well as with regard to persons operating in the regulated sector of public services based on the principle of cooperation with the Central Bank of the Republic of Armenia and Public Services Regulatory Commission of the Republic of Armenia (the Regulatory Bodies). The Regulatory Bodies shall – before the adoption of secondary legal acts on the prevention of abuse of dominant position, anticompetitive agreements and concentrations – submit them to the SCPEC RA for an opinion. The SCPEC RA shall refrain from making any intervention related to an issue raised with regard to economic competition where the Regulatory Bodies reasonably inform the commission that the given issue is reserved, based on the objectives of regulation prescribed by Law, to the Regulatory Bodies and that the Regulatory Bodies perform functions prescribed by Law. The Regulatory Bodies shall, while undertaking measures and within the scopes prescribed by Law, provide the SCPEC RA with the opportunity of expressing its position. The Regulatory Bodies shall mandatorily address all the issues raised and positions expressed by the SCPEC RA, by providing justifications for the acceptance or non-acceptance thereof.

The Regulatory Bodies shall mention the position of the SCPEC RA in their final opinion or decision and – in the case of rejecting the position of the commission – the justifications thereon. Where the SCPEC RA finds that the information provided by the Public Services Regulatory Commission is not justified, it may apply to the Prime Minister by filing a motion for including the given issue in the agenda of the regular sitting of the government. In the case provided for by this part, the government shall, by adoption of an individual legal act, determine the competent body performing the functions of economic competition related to the issue raised with regard to the economic competition.

The Public Services Regulatory Commission is authorised to develop guidelines, in consultation with the SCPEC RA, with respect to the types of anticompetitive practices to which the competitive safeguard rules apply and procedures for determining whether or not to impose competitive safeguards in relation to such practice.

The SCPEC RA and the Public Services Regulatory Commission have signed a memorandum of understanding for closer cooperation and exchange of information on issues of common interests. The SCPEC RA has also entered into a memorandum of understanding with the Central Bank of Armenia in the financial sector and the Ministry of Finance in the field of public procurement, as well as with the police on cooperation and information sharing.

**May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.**

No. The Minister of Economic Development and Investments deals with the creation of economic policy in Armenia. The SCPEC RA is independent in its decision-making and politicians do not have a legal right to overrule or disregard the SCPEC RA decisions.

It should be noted that article 16.1 of the Law prohibits state officials provision of prohibited state aid and article 16.3 prohibits anticompetitive activities of state bodies and their officials, including acts adopted by bodies that restrict, prevent or prohibit competition. Besides this, due to the latest legislative amendments, the Code 'On Administrative Offences' concerns administrative responsibility measures (including fines) for state officials who violate respective provisions of competition law.

**Does the law allow non-competition aims to be considered when taking decision?**

No. The Law does not provide for non-competition aims to be considered by the SCPEC RA in the decision-making process. The purpose of this Law is to protect and encourage free economic competition, ensure appropriate environment for fair competition, promote development of entrepreneurship and protect consumers' rights.

**Which body hears appeals against agency's decisions?**

Decisions of the SCPEC RA may be appealed against through administrative procedure within a period of 10 days following its entry into force. Decisions of the SCPEC RA may be appealed in the court following disagreement with the results of discussion of administrative appeal: within one month from the moment of adoption of a decision on appeal or, in case of not filing an administrative appeal, within one month following the effective date of the SCPEC RA decision.

The decisions of the Administrative Court are subject to review by the Court of Appeal (Administrative Appeal Court). Based on the complaint, in cases and orders stipulated by Administrative Procedure Code, the Administrative Appeal Court reviews judicial acts deciding the case on merits and interim judicial acts of Administrative Court that have not come into legal force. In the same way, the decisions of the Administrative Appeal Court are subject to review by the Court of Cassation in cases and order stipulated by Administrative Procedure Code.

**Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?**

No.

**Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.**

Yes. The economic entities applied to the SCPEC RA for concentration permission. The SCPEC RA started administrative proceedings based on this application. One of the economic entities refused to submit information to the SCPEC RA, which was necessary to assess the permission of the concentration.

For this reason, the SCPEC RA rejected the concerned concentration.

**Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.**

Yes. The SCPEC RA imposed conditions on a proposed concentration for two cases.

In the first instance, the SCPEC RA allowed the concentration while imposing the following conditions:

- a physical person cannot exercise the powers of the executive body of company or otherwise participate in the work of the executive body; and
- the economic activity of the company must be independent of the company.

Regarding the second case, the SCPEC RA allowed the concentration but imposed the condition that the company should refrain from the use of discriminatory conditions (in the case of other equal conditions) to economic entities acting in laying hen, chicks and incubation egg product markets as well as in other markets affiliated with those markets.

Meanwhile, according to article 10 of the Law:

- concentration subject to declaration shall be permitted or prohibited upon the decision of the SCPEC RA, which may also contain conditions and obligations binding for a participants of the concentration;
- while assessing concentration subject to declaration, the SCPEC RA shall take into consideration the circumstances impeding economic competition, including leading to or strengthening a dominant position or deteriorating competitive conditions;
- the SCPEC RA shall also permit concentration subject to declaration, where the economic entity proves that competitive conditions shall be ensured in the commodity market as a result of the given concentration;
- it shall be prohibited to put the concentration subject to declaration into effect:
  - before rendering of a decision by the SCPEC RA (undeclared concentration); or
  - in case a decision on prohibition of concentration is rendered by the SCPEC RA (prohibited concentration); and
- a concentration prohibited upon the decision of the SCPEC RA and put into effect shall be subject to liquidation (rescission, termination) upon the decision of the SCPEC RA, as prescribed by the legislation.

**Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.**

No. According to SCPEC RA Decision N 478-N, 16 December 2016, 'On Defining the value (amount) of the assets and profit(s) of the participants(s) of concentration subject to declaration, on the procedure for declaration of the concentration of economic entities and on the form of the declaration' and according to the Law of the Republic of Armenia 'On Protection of Economic Competition', a unified one-phase investigation applied for all type of concentrations.

**Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.**  
No.

**Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?**

The concept of leniency was introduced in amendments to the Law, which entered into force in April 2011. The SCPEC RA may adopt a decision not to apply a liability measure with respect to an economic entity if the economic entity, prior to the instigation of an administrative proceeding by the SCPEC RA in connection to the given agreement, is the first to apply on its own initiative to the SCPEC RA, as prescribed by law, and voluntarily undertakes a commitment to terminate its participation in that anticompetitive agreement and exclude such in the future, simultaneously submitting such evidence regarding that anticompetitive agreement that, in the opinion of the SCPEC RA, is sufficient grounds for instigating an administrative proceeding in connection to the given anticompetitive agreement.

There has been no specific case on leniency up to now.

The absence of dawn raids competence does not allow SCPEC RA to obtain direct and strong evidences and thus establish many cartel cases. For this reason, there are few cases on anticompetitive agreements (including cartels) which in its turn resulted in having no opportunity for applying leniency.

**Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?**

Criminal enforcement is not a subject of the Law. There is no reference to any other laws. However, according to the article 195 (on illegal anticompetitive activity) of the Criminal Code of the Republic of Armenia:

- the establishment and maintaining of illegal artificially high or low monopolistic prices, as well as restriction of competition by prior agreement or by coordinated actions, in order to divide the market by territorial principle, to restrict the penetration into the market, to force other economic subjects out of the market, or to establish and maintain discriminative prices, is punished with a fine in the amount of 500 to 1000 minimal salaries (500,000 to 1 million Armenian drams), or with arrest for the term of two to three months, or with imprisonment for the term of up to three years.
- The same action committed by violence or threat of violence, by damaging or destruction of somebody's property, or by threat of damaging, by abuse of official position or by an organised group, is punished with imprisonment for the term of three to eight years, with or without property confiscation.

The responsible authorities are the police and the Prosecutor General's Office.

**Are there any plans to reform the competition law?**

The Law was amended on 23 March 2018 and the following amendments and supplements have been included in the mentioned amendments:

- harmonising the Law with international standards;
- ensuring a unified approach as regards sanctions by introducing a margin of discretion for setting all fines;
- increasing the effectiveness of control over the procurement processes;
- imposing personal administrative responsibility measures for state officials and for officials of economic entities for violation of competition law;
- clarifying and supplementing elements of manifestation of abuse of dominant position, unfair competition and anticompetitive agreements;
- correcting issues and filling gaps that were revealed during administrative complaints and court procedures; and
- aligning the Law to the new Constitution (2015).

**When did the last review of the law occur?**

See previous answer.

**Do you have a separate economics team? If so, please give details.**

The SCPEC RA does not have a separate economics unit. The economists who are part of the staff work jointly with the lawyers in each case. There is an Analysis and Competition Assessment Department that is responsible for carrying out general economic research.

**Has the authority conducted a dawn raid?**

No, because the SCPEC RA does not have competence to conduct dawn raids.

**Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.**

No. In this regard, it is worth stating that only in 2018, due to relevant legislative amendments, did the SCPEC RA gain competence for imposing fines on officers or directors of companies for violation of competition law.

**What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?**

According to the Law, there is no pre-merger notification procedure; however, for merger notification, the SCPEC RA issued a decision N478-N dated 16 December 2016 'On defining the value (amount) of the assets and profit(s) of the participants(s) of concentration subject to declaration, on the procedure for declaration of the concentration of economic entities and on the form of the declaration'.

Concentrations of economic entities, prior to being put into action, shall be subject to declaration where:

- the total value of the assets of the participants of the horizontal concentration in the fiscal year preceding the transaction amounted to at least 1.5 billion drams or the value of assets for at least one of the participants amounted to at least 1 billion drams in the fiscal year preceding the transaction;
- the total amount of profits of the participants of the horizontal concentration in the fiscal year preceding the transaction amounted to at least 3 billion drams or the amount of the profit for at least one of the participants amounted to at least 2 billion drams in the fiscal year preceding the transaction;
- the total value of the assets of the participants of the vertical or mixed concentration in the fiscal year preceding the transaction amounted to at least 3 billion drams or the amount of the assets for at least one of the participants amounted to at least 2 billion drams in the fiscal year preceding the transaction; and
- the total amount of profits of the participants of the vertical or mixed concentration in the fiscal year preceding the transaction amounted at least to 4 billion drams or the amount of the profit for at least one of the participants amounted to at least 3 billion drams in the fiscal year preceding the transaction.

**Are there any restrictions on minority investments that involve less than a majority stake in the business?**

No.

